REMARKS

By this Amendment, Applicants have amended claim 34 solely to correct claim dependency. In addition, Applicants have amended claim 33 to correct a typographical error. Upon entry of this Amendment, claims 23-44 remain pending and under current examination. In the Office Action, the Examiner took the following actions:

(1) rejected claims 26, 29, 36, and 39 under 35 U.S.C. § 112, second paragraph, as being indefinite;

(2) rejected claims 34-41 under 35 U.S.C. § 112, second paragraph, as being indefinite;

(3) rejected claims 23, 33, and 42-44 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,289,437 ("Chiruvolu"); and

(4) rejected claims 24-32 and 34-41 under 35 U.S.C. § 103(a) as being unpatentable over Chiruvolu in view of U.S. Patent Application Publication No. 2002/0176389 A1 ("Porikli").

Applicants respectfully traverse these rejections for the following reasons.

Rejection of Claims 26, 29, 36, and 39 under 35 U.S.C. § 112, Second Paragraph:

Applicants request reconsideration and withdrawal of the rejection of claims 26, 29, 36, and 39 under 35 U.S.C. § 112, second paragraph, as being indefinite.

The Office Action alleged that the relationship between "estimating a first bandwidth" and "forecasting said first bandwidth" as recited in claims 24 and 26, respectively, is not clear. *See* Office Action, p. 2. Applicants respectfully disagree and submit that claims 24 and 26 fully comply with 35 U.S.C. § 112, second paragraph. For example, claim 24 recites "said step of detecting a burst comprises: estimating a first bandwidth of said high priority traffic in a first

predetermined time interval" (claim 24, emphasis added). Claim 26 recites "[t]he method

according to claim 24, wherein said step of estimating said first bandwidth comprises: measuring

a bandwidth ... and forecasting said first bandwidth in said first time interval from said measured

bandwidth" (claim 26, emphases added). It is clear that claim 26 recites that the recited

"estimating" in claim 24 comprises "measuring" and "forecasting." And, the claimed

"forecasting" is different from the step of "estimating," at least because "forecasting" is a

claimed part of "estimating." Support for claims 24 and 26 can be found in the Specification at,

for example, p. 13, ll. 14-16 and p. 14, ll. 30-33.

Claims 29, 36, and 39 contain similar recitations as claim 26, and should therefore be

allowable for the same reason as claim 26. Therefore, Applicants respectfully request

withdrawal of the 35 U.S.C. § 112, second paragraph, rejection of claims 26, 29, 36, and 39.

Rejection of Claims 34-41 under 35 U.S.C. § 112, Second Paragraph:

Applicants have amended claim 34 to correct claim dependency. Accordingly, claim 34

is now dependent from claim 33, and the claimed "said traffic controller" recited in claim 34 has

proper antecedent basis in claim 33. Therefore, Applicants respectfully request withdrawal of

the 35 U.S.C. § 112, second paragraph, rejection of claims 34-41.

Rejection of Claims 23, 33, and 42-44 under 35 U.S.C. § 102(e):

Applicants request reconsideration and withdrawal of the rejection of claims 23, 33, and

42-44 under 35 U.S.C. § 102(e) as being anticipated by Chiruvolu.

In order to establish anticipation under 35 U.S.C. § 102 , the Examiner must show that

each and every element as set forth in the claim is found, either expressly or inherently described,

in Chiruvolu. *See* M.P.E.P. § 2131. Chiruvolu, however, does not disclose each and every

element of Applicants' claims. Specifically, Chiruvolu does not disclose or suggest at least

Applicants' claimed "tearing down at least one switched circuit connected to said at least one depleted node interface" and "setting up at least one new temporary switched circuit starting from said at least one depleted node interface," as recited in independent claim 23 (emphases added).

In contrast, Chiruvolu discloses a system and method to reroute low priority (LP) traffic from a direct light channel (LC) to a multi-hop LC in order to make the direct LC available to high priority (HP) traffic. *See* Chiruvolu, Abstract. For example, Chiruvolu discloses that "[i]n step 404, a determination is made whether a victim LP traffic trunk on the direct LC between the ingress/egress node pair is available for rerouting." Chiruvolu, col. 5, ll. 17-19. "If an eligible victim LP traffic trunk is found, ... the victim LP traffic trunk is rerouted to a multi-hop LC." Chiruvolu, col. 5, ll. 22-25 and Fig. 4, step 406. "Execution then proceeds to step 408, in which the HP traffic trunk is mapped on to the direct LC on to which the victim LP traffic trunk was previously mapped." Chiruvolu, col. 5, ll. 27-29 (emphasis added). That is, instead of "tearing down" an LP traffic LC and "setting up" a "*new* temporary" LC for forwarding HP traffic, Chiruvolu's method "reroutes" LP traffic from a direct LC to a multi-hop LC in order to make the *existing* direct LC available to HP traffic. This is clearly different from Applicants' claim 23.

Even though Chiruvolu discloses a tearing-down process (Fig. 6, steps 616-620 and col. 7, ll. 4-12), Chiruvolu's tearing-down process is completely different from Applicants' claimed "tearing down." For example, Chiruvolu's tearing-down process is a result of *underutilization*, namely, when the LC "utilization is below a lower threshold." Chiruvolu, col. 6, ll. 56-58 and Fig. 6, step 610 (emphasis added). That is, Chiruvolu's tearing-down of LC is not for forwarding HP traffic in the event of LC overutilization (high traffic load), but for closing inefficient LC when the traffic on such LC is low. Therefore, Chiruvolu's tearing-down

process does <u>not</u> constitute, and is thus completely different from, Applicants' claimed "tearing down."

Since <u>Chiruvolu</u> does not disclose each and every element of independent claim 23, <u>Chiruvolu</u> does not anticipate Applicants' independent claim 23 under 35 U.S.C. § 102(e). Therefore, independent claim 23 should be allowable over <u>Chiruvolu</u>. Independent claim 33, while of different scope, contains similar recitations as independent claim 23, and should also be allowable for the same reasons as independent claim 23. In addition, dependent claims 42-44 should be allowable at least by virtue of their dependence from independent claim 33. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) rejection.

<u>Rejection of Claims 24-32 and 34-41 under 35 U.S.C. § 103(a)</u>:

Applicants request reconsideration and withdrawn of the rejection of claims 24-32 and 34-41 under 35 U.S.C. § 103(a) as being unpatentable over <u>Chiruvolu</u> in view of <u>Porikli</u>. No *prima facie* case of obviousness has been established with respect to these claims for at least the reason that <u>Chiruvolu</u> and <u>Porikli</u>, taken alone or in combination, do not teach or suggest each and every claim element. The burden thus remains with the Examiner.

As explained above, Applicants have established that <u>Chiruvolu</u> does not disclose or suggest at least Applicants' claimed "tearing down at least one switched circuit connected to said at least one depleted node interface" and "setting up at least one new temporary switched circuit starting from said at least one depleted node interface," as recited in independent claim 23. <u>Porikli</u> does not cure the deficiencies of <u>Chiruvolu</u>. For example, <u>Porikli</u> discloses "a method [which] dynamically allocates and renegotiates bandwidth to traffic having a variable data rate in a network." <u>Porikli</u>, Abstract. However, <u>Porikli</u> does not disclose or suggest Applicants'

claimed "tearing down ... switched circuit" or "setting up ... new temporary switched circuit" anywhere in its disclosure.

Therefore, <u>Chiruvolu</u> and <u>Porikli</u>, taken either alone or in combination, fail to teach or suggest every claim element of independent claim 23. Thus, the burden has not been shifted and no *prima facie* case of obviousness has been established with respect to independent claim 23. Independent claim 23 should therefore be allowable over <u>Chiruvolu</u> in view of <u>Porikli</u>. Independent claim 33, while different in scope, contains similar recitations as independent claim 23, and should also be allowable for the same reason as independent claim 23. Therefore, dependent claims 24-32 and 34-41 should be allowable at least by virtue of their respective dependence from independent claim 23 or 33. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

<u>Conclusion</u>:

Applicants request reconsideration of the application and withdrawal of the rejection. Pending claims 23-44 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the related claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any such statements or characterizations in the Office Action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any

additional required fees to our deposit account 06-0916.

Respectfully submitted,

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